

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

**CIVIL NO. 3:06CV293  
(3:02CR156)**

|  |   |                     |
|--|---|---------------------|
| <b>MACY WALKER McLEAN,</b>             | ) |                     |
|  | ) |                     |
| <b>Petitioner,</b>                     | ) |                     |
|  | ) |                     |
| <b>Vs.</b>                             | ) | <b><u>ORDER</u></b> |
|  | ) |                     |
| <b>UNITED STATES OF AMERICA,</b>       | ) |                     |
|  | ) |                     |
| <b>Respondent.</b>                     | ) |                     |
| <hr style="width:45%; margin-left:0"/> | ) |                     |

**THIS MATTER** is before the Court on Respondent's motion for summary judgment and the Petitioner's motion to amend.

In accordance with *Roseboro v. Garrison*, 528 F.2d 309 (4<sup>th</sup> Cir. 1975), Petitioner, who is proceeding *pro se*, is cautioned that she carries a heavy burden in responding to the Respondent's motion for summary judgment. Rule 56(e) of the Federal Rules of Civil Procedure provides:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

This language means that if the Petitioner has any evidence to offer to show that there is a genuine issue for trial, she must now present it to the Court in a form which would otherwise be admissible at trial, that is, in the form of affidavits or unsworn declarations. An affidavit is a written statement under oath; in other words, a statement prepared in writing and sworn before a notary public. An unsworn statement, made and signed under the penalty of perjury, may also be submitted.

Affidavits or statements must be presented by the Petitioner to this Court within thirty (30) days from the date of this Order. As stated by Rule 56(e), Petitioner's failure to respond may result in the action being summarily dismissed.

**IT IS, THEREFORE, ORDERED** that the Petitioner is allowed thirty (30) days from the date this Order is filed within which to respond, in accordance with the provisions of Fed. R. Civ. P. 56(e) to Respondent's motion for summary judgment.

**IT IS FURTHER ORDERED** that the Petitioner's motion to amend is hereby **ALLOWED**.

Signed: July 20, 2007

A handwritten signature in dark ink, appearing to read 'L. H. Thornburg', written over a horizontal line.

Lacy H. Thornburg  
United States District Judge

